D.B. CIVIL SPECIAL APPEAL (WRIT) NO.47/2006

Manager, M/s Selection Synthetics Ltd. Vs. Labour Court, Bhilwara & Anr.

Date : 12.04.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Niraj Jain) for the appellant.
Mr. Pankaj Bohra)

Mr. D.K. Parihar for the respondent.

BY THE COURT:-(PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 15th July, 2005 dismissing the writ petition filed by the appellant, Manager against the award of Labour Court, Bhilwara holding it to be a case of illegal retrenchment of the respondent-workman and directing his reinstatement with continuity in service and also back wages on the average monthly remuneration in the year preceding the date of

retrenchment.

Subject of the industrial dispute was referred to the Labour Court was whether the termination of the services of Rameshwar Lal workman w.e.f. 14.9.1999 is valid and if not to what relief the workman is entitled to.

The claim of the workman was that he is a workman of M/s Selection Synthetics Ltd. since 13.11.1997 and his services were terminated by oral order on 14.9.1999. No notice as required under Section 25-F of the Industrial Dispute Act was given prior to effecting the termination of service nor remuneration in lieu of one month's notice was given to the workman. No retrenchment compensation was paid to him before retrenchment. Thus, the conditions of Section 25-F had not been complied with before terminating the services of respondent. He claimed reinstatement with back wages and continuity in service.

In reply to the claim after referring to the previous dispute, it was specifically pleaded that on

14.9.1999, the workman voluntarily submitted his resignation which was accepted by the factory Management. Therefore, it was not a case of termination by the Management. The affidavits in line of claim and reply were filed by the workman as well as by the Management. The workman in his affidavit stated that he has not voluntarily submitted any resignation letter and if the management has used blank papers signed by him, it is not in his knowledge. In cross-examination, he clearly stated that "**I put my signatures only after reading the documents**". In other words, the workman did not deny at any stage that the document of resignation did not contain his signature and specific admission was that he does not sign blank papers without reading it. The management on its behalf had filed affidavit of Labour Officer Sobhag Singh. He submitted the affidavit in tune with reply and in cross-examination he has clearly stated that the body of the resignation letter is not in the hand of Rameshwar Lal but he has got it written by someone else but who is scriber of the letter is not known to him. He has also stated that the resignation was accepted by the G.M.

Thus, the only issue which was raised between the parties was about the fact whether the workman has voluntarily left the services or the services were terminated by the Management. No issue was even joined about the compensation under Section 25F. It was specifically stated by the Management that since the workman has voluntarily resigned from the service, the question of complying with requirement of Section 25F do not arise.

In the aforesaid state of affairs of the pleadings, the Labour Court has rejected the plea of voluntarily resignation and considering it to be finding of fact, the learned Single Judge has not interfered in the petition under Article 226 and 227 of the Constitution of India.

However, considering the award and the material on record we are of the opinion that the finding recorded by the learned Single Judge is perverse to which no person of ordinary prudent could reach and stand vitiated.

On the one hand the labour court was conscious of the fact that the signature on the resignation letter had not been denied and only because in the statement he has stated that he has not voluntarily given any resignation the labour court assumed that the signature of the incumbent on the resignation letter is not admitted. This erroneous assumption on the part of the Labour Court has resulted in misdirecting him in construing the entire evidence. As a matter of fact the signature of the workman on the resignation letter remain undisputed. Notwithstanding that he stated in his main statement that his signature might have been obtained on blank paper, he has admitted that he never signed any document without reading it not only negatives his case of signature on blank paper but also proves that the resignation under his signature was duly substituted by him.

The only question that remained to be considered is whether the resignation letter was given voluntarily or under any coercion or undue influence. In

that event it was for the workman to show that what sort of coercion or undue influence was practised which could have led him to render his resignation letter. For drawing adverse inference against the management, the labour court has also emphasised the fact that person, who has accepted the resignation letter has not been produced. We have also noticed above that the Labour Manager has clearly stated that the resignation letter was accepted by the General Manager. Thus, it is also not only a case of misdirecting in law about the burden of proof but misreading of clear evidence on record. Therefore, the finding recorded by the Labour Court stands vitiated. A perusal of the evidence produced by the workman shows that he has not led any evidence about any sort of undue influence that has been practised upon him for submitting the resignation.

In these circumstances, the submission of resignation stands amply proved on record by the statement of the workman himself and, in the absence of any evidence of undue influence or coercion upon the workman, the conclusion that the workman voluntarily

left the services is irresistible. It is clearly not a case of retrenchment. The Labour Court apparently erred in not correctly appreciating the law about the burden of proof and committed an apparent error in ignoring the admission of workman in his statement before him. Therefore, the finding cannot be considered final and binding on this Court.

In view of the aforesaid conclusion, the special appeal deserves to be allowed and is hereby allowed. The judgment under appeal is set aside and as a result, the writ petition is also allowed. The award of the Labour Court is quashed. No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

babulal/